

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition Pursuant to 47 U.S.C. 160 for Partial	)	
Forbearance from the Commercial Mobile	)	WT Docket No.01-184
Radio Services Number Portability Obligation	)	
	)	

**REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.  
IN SUPPORT OF VERIZON WIRELESS' PETITION**

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AT&T Wireless Services, Inc. ("AWS") hereby respectfully submits its reply comments in support of the Petition of Verizon Wireless ("Verizon petition") for partial forbearance from the Commission's rules requiring commercial mobile radio service ("CMRS") carriers to provide wireless number portability ("WNP").<sup>1</sup> The record fully demonstrates that forbearance from WNP meets the requirements of Section 10 of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> and thus, AWS urges the Commission to grant the Verizon petition.

**I. INTRODUCTION**

The evidence on the record demonstrates that the forbearance test has been fully met: there is compelling evidence that WNP is no longer necessary for ensuring just and reasonable rates, for protecting consumers, or for promoting competition. Moreover, various carriers have demonstrated that the costs of implementing WNP are substantial and that the risks of implementing WNP simultaneously with pooling to network reliability and customers' service

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<sup>1</sup> *WTB Seeks Comment on Wireless LNP Forbearance Petition Filed by Verizon Wireless*, DA 01-1872, WT Docket No.01-184, Public Notice (rel. Aug.7, 2001); *Verizon Wireless' Petition Pursuant to 47 U.S.C. § 160 for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, WT Docket No. 01-184 (July 26, 2001) ("Verizon petition"). Comments were filed by parties on September 21, 2001.

are significant. In contrast, the benefits of WNP touted by the parties who oppose the Verizon petition are speculative or relatively minor and far outweighed by the costs and burden imposed on the carriers by the WNP obligation. Thus forbearance from the WNP requirement is consistent with the public interest.

Parties opposing the Verizon petition also claim that “a deal is a deal”, and assert that nothing has changed since the Commission declined to grant forbearance two years ago.<sup>3</sup> These parties ignore two critical developments since the Commission imposed the current WNP mandate: (1) increased CMRS competition with new entrants obtaining a significant market share and having a significant positive impact on the market *without WNP*; and (2) the recent denial of a transition period between the implementation of porting and pooling, with increasing pressure for wireless carriers to participate in pooling because of the numbering shortage. Therefore, while the need for the WNP mandate as a vehicle to promote competition has decreased, the level of difficulty of complying with the mandate has increased. The public interest would best be served by forbearing from the WNP requirement and permitting AWS and other wireless carriers to focus their resources and time on successful simultaneous implementation of number pooling, rather than dividing resources between implementation of the two functions.

## **II. THE STANDARD FOR FORBEARANCE HAS BEEN MET**

Numerous parties provide compelling evidence that the test for forbearance is satisfied by current market conditions,<sup>4</sup> just as this test was satisfied two years ago when the Commission granted forbearance from WNP until November 2002.<sup>5</sup>

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<sup>2</sup> 47 U.S.C. § 160.

<sup>3</sup> California comments at 11-13; State Coordination Group comments at 1-5.

<sup>4</sup> See AWS comments at 4-6; Cingular comments at 2-4; CTIA comments at 11-13; Sprint PCS

**A. WNP is Not Needed to Ensure Reasonable Rates or to Protect Customers**

It is undisputed that CMRS competition today is thriving and that CMRS rates have continued to fall since the Commission's 1999 decision granting temporary forbearance from the WNP requirement until November 24, 2002.<sup>6</sup> Commenters cite study after study on this point, including the Commission's own *Sixth CMRS Report* in which it concludes that CMRS is now a "competitive marketplace" and that per-minute CMRS rates have been falling steadily.<sup>7</sup> Indeed, the wireless industry is a prime example of how a healthy competitive marketplace has been allowed to develop, unfettered by extensive regulation. These facts are so well-established that even the opponents of the Verizon petition do not make any serious attempt to rebut them, and where they do, they *fail* to be convincing, because they cannot deny the plain fact that prices have fallen -- by as much as 25% within the past year—or that consumers have several competitive choices in wireless carriers.<sup>8</sup>

Similarly, the record is replete with evidence that the WNP is not needed to protect consumers. The existence of a 20%-30% annual CMRS customer churn rate demonstrates that

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comments at 3; Voicestream comments at 6-10.

<sup>5</sup> *Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligation*, FCC 99-19, WT Docket No.98-229, Memorandum Opinion and Order, 14 FCC Rcd 3092 (1999) ("*CTIA Forbearance Order*") at 33 (Appendix A). See also 47 CFR § 52.31(a) (CMRS providers must be LNP capable by November 24, 2002).

<sup>6</sup> Cingular comments at 6-11; Sprint PCS comments at 4.

<sup>7</sup> Cingular comments at 11, citing *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 01-192, Sixth Report (2001) at 28 ("*Sixth CMRS Report*"); Voicestream comments at 7, citing Bureau of Labor Statistics, *Consumer Price Index – All Urban Consumers, Cellular Telephone Service*.

<sup>8</sup> ASCENT concedes that rates have decreased, but argues that average monthly revenues per CMRS subscriber are increasing. ASCENT comments at 13, citing *Sixth CMRS Report* at 23, 27-28, Appendix C, C-2. However, as the Sixth CMRS Report also mentions and ASCENT fails to cite, monthly revenues are increasing only because customers are increasing their minutes of CMRS use not

customers are not staying with a service provider when they are dissatisfied. Moreover, various commenters have noted that CMRS carriers continue to compete actively to provide attractive pricing and monthly plans to subscribers; to build out their networks; and to enhance customer service and service quality.<sup>9</sup> Although the commenters who oppose the Verizon petition expend slightly more energy on attempting to dispute that this prong is met, the arguments they make are not compelling because they do not demonstrate that customers have been harmed by the lack of WNP.<sup>10</sup>

**B. There is Substantial Record Evidence that WNP Would Serve the Public Interest**

The real battle lines are thus drawn around whether WNP meets the public interest. As Cingular notes, because CMRS rates are already competitive and continue to decline, and because consumers have not been harmed by the lack of WNP, “the only issue [to determine] is whether forbearance from requiring CMRS [WNP] is ‘consistent with the public interest.’”<sup>11</sup>

**1. WNP is Not Needed to Promote Competition**

As the statutory test for forbearance provides and as many carriers have noted, one of the factors that the Commission has traditionally considered in determining whether forbearance is consistent with public interest has been whether forbearance will promote competition.<sup>12</sup> In the *CTIA Forbearance Order*, the Commission looked at the effect of forbearance on competition

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because of increasing rates. *Sixth CMRS Report* at 26. Also see footnote 14.

<sup>9</sup> Cingular comments at 9-10; Sprint PCS comments at 6-7; Voicestream comments at 7-9.

<sup>10</sup> See, e.g., California comments at 8-9 (asserting consumers will be harmed by forbearance from the WNP requirement because they will be “forever prevented from changing wireless service providers by their unwillingness to give up telephone numbers.”); New Hampshire comments at 8-9 (consumers will be harmed by forbearance from the WNP requirement because of the costs and inconveniences they will experience in connection with telephone number changes.)

<sup>11</sup> Cingular comments at 3.

<sup>12</sup> See *CTIA Forbearance Order* and 47 U.S.C. § 160(b).

and concluded that delaying implementation of WNP would likely have a small impact on wireless competition in the near term because price, coverage, and service quality were the key factors driving consumer choice and high churn rates suggested that the lack of WNP was not a barrier to customers switching wireless carriers.<sup>13</sup> Subsequent developments in the CMRS market lead to the conclusion that the impact of forbearance from the WNP requirement has indeed not harmed CMRS competition and that such forbearance has likely had a positive effect on competition by allowing carriers to build out their networks and focus on providing customers new services and products. The record bears out this conclusion. Almost all of the commenters, even those who oppose the Verizon petition, agree with or cannot dispute the Commission's conclusion in the *Sixth CMRS Report* that the CMRS market is competitive.<sup>14</sup> Most of these commenters do, however, assert that WNP would make the wireless market more competitive by making it easier (and more attractive) for customers to change carriers, which in turn would motivate carriers to lower rates and improve service quality.<sup>15</sup> They also allege that WNP would enhance competition by facilitating the entry of new providers and by maintaining “a vibrant resale market.”<sup>16</sup>

As an initial matter, AWS vehemently disagrees with the commenters who assert that the wireless market is not competitive “enough.” The wireless market is a model of vibrant facilities-based competition. The wireless market is significantly more competitive than the

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<sup>13</sup> CTIA Forbearance Order at para. 34.

<sup>14</sup> Although ASCENT does not deny that the CMRS market is competitive, it alleges that it is “far from perfectly competitive” – citing increased market concentration, increases in average monthly revenue per subscriber and a small resale market as indicia of “competitive deficiencies”. ASCENT comments at 13-14. Similarly the California Commission challenges the competitive nature of the CMRS marketplace asserting that: “[t]he ability to freely change service providers is the essence of competition.” California comments at 16.

<sup>15</sup> ASCENT comments at 4-6; California comments at 17; Ohio comments at 6-7; WorldCom comments at 7-8; New Hampshire comments at 11-12.

landline local market, where, even with WNP, competitive providers seem unable to secure a foothold and rates continue to rise.<sup>17</sup>

Moreover, there are serious questions about whether WNP will achieve any competitive benefits and, if so, how significant those benefits would be. The combination of a high churn rate<sup>18</sup> and the large number of competitive alternatives in the market already places immense pressure on carriers to lower rates, to improve service quality, and to offer innovative products and services.<sup>19</sup> It is not clear that WNP would increase that pressure or result in additional customer benefits.<sup>20</sup> Moreover, the enormous success experienced by new wireless entrants demonstrates unequivocally that WNP is not needed to facilitate entry into the market. In this regard it is clear that “cellular incumbency was not the potent restraint on successful competitive entry that the Commission had feared.”<sup>21</sup> As for the enhancement of the resale market, the Commission has already decided in other contexts to cease using regulatory mandates to promote the resale market.<sup>22</sup>

A number of parties also argue that WNP is needed to promote wireless to wireline

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<sup>16</sup> WorldCom comments at 8-9.

<sup>17</sup> The average monthly cost of local service increased more than 7% from October 1990 to October 2000. FCC: Trends in Telephone Service, February 2001.

<sup>18</sup> See Cingular comments at 9-10 (monthly churn rates between 1.5% and 4.5% and yearly churn rate of 30% and growing); Voicestream comments at 8-9 (nearly 20% of all mobile customers switched service providers during year 2000 alone). Several of the state commenters incorrectly characterize the wireless industry’s churn rate as low. See e.g. Vermont Commission comments at 4; Ohio Commission comments at 5; State Coordination Group comments at 5. It appears that the error is driven by their use of the monthly as opposed to the yearly churn rate.

<sup>19</sup> See Voicestream comments at 7, citing *CTIA Forbearance Order* at 3101-02 (¶ 19).

<sup>20</sup> CTIA comments at 11-13; Voicestream comments at 7-8; Cingular comments at 6-15; Sprint PCS comments at 4.

<sup>21</sup> Cingular Comments at 5.

<sup>22</sup> First Report and Order, 11 FCC Rcd 18455, 18468-69 (¶ 24) (1996) aff’d sub. nom. *Cellnet Communications v. FCC* 149 F.3d 429 (6<sup>th</sup> Cir. 1998).



competition.<sup>23</sup> In support of the argument they cite the growing substitution of wireless phones for wireline phones, minutes and services.<sup>24</sup> However, the very evidence they cite undercuts their argument. The fact that wireless carriers today are beginning to compete successfully for wireline minutes and some wireline services like second lines and pay phones, demonstrates that WNP is not needed to promote competition. Perhaps the most compelling evidence of this fact is that CMRS carriers like Cricket who are directly competing for landline customers<sup>25</sup> are not seeking WNP. Moreover, although only a small number of customers are actually giving up their wireline phones for wireless service,<sup>26</sup> AWS submits that there are number of factors, other than the lack of WNP which are likely larger contributors to the slow growth rate in wireless-wireline competition. These factors include heavily subsidized rates for local service that remain substantially lower than wireless rates; higher quality and more ubiquitous landline service; the lack of wireless extension phones; and relatively slow wireless data speeds.

## **2. The Cost of WNP Outweighs the Benefits**

Given that competition continues to grow at a fast and furious pace in the wireless industry, various commenters have noted that the remaining question of whether WNP is in the public interest should thus focus on the costs and benefits of implementing WNP.<sup>27</sup> As Sprint PCS observes, the Commission itself has articulated that among the questions to be asked in

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<sup>23</sup> WorldCom comments at 9-10; State Coordination Group comments at 8-9; California comments at 19-23.

<sup>24</sup> California comments at 20 (“customers today eschew their wireline telephones to make toll calls, preferring to take advantage of wireless calling plans which afford customer thousands of “free” minutes if air time per month.”); WorldCom comments at 9 (“wireless rates have dropped and increasing numbers of consumers are turning to wireless phones as a substitute for wireline phones.”)

<sup>25</sup> *Sixth CMRS Report* at 33-34. In addition, it is significant that, as Cingular notes, there is no other country in which there is wireless/wireline portability. Cingular comments at 14.

<sup>26</sup> According to recent Yankee groups only 3% of customers have given up our wireless phones for wireless phone. *Sixth CMRS Report* at 36.

determining whether to impose a regulation or take a specific action is, what are the disadvantages of the Commission regulation or action, “especially as to network costs *and additional burdens on providers*, particularly smaller providers.”<sup>28</sup> The record demonstrates that forbearance in this instance is fully consistent with such analysis of what is in the public interest because the costs of implementing WNP would far outweigh the benefits. Further, the Commission’s recent requirement to implement pooling<sup>29</sup> along with porting in the same timeframe has placed significant time pressure and resource demands on the industry, and pose significant risks to the network, which indisputably would be contrary to the public interest.

**a. There is Substantial Record Evidence That WNP is Costly and Difficult to Implement**

Contrary to the concerns expressed by some parties,<sup>30</sup> the record contains substantial evidence that the costs of implementing WNP are real and significant.<sup>31</sup> For example, Cingular estimates that the expenditures to modify systems for WNP amount to approximately \$50 million in implementation costs in 2002 alone, not including other ongoing costs.<sup>32</sup> Sprint PCS estimates that for system modifications alone, it will need to invest 170,000 man-hours and \$26 million between now and the current November 2002 LNP deadline<sup>33</sup> and that it will spend a minimum

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<sup>27</sup> See, e.g., Cingular comments; Sprint PCS comments; Voicestream comments.

<sup>28</sup> Sprint PCS comments at 11, *citing CMRS Interconnection Order*, 11 FCC Rcd 9462, 9473, at para.18 (1996). (emphasis added).

<sup>29</sup> See *Matter of Numbering Resource Optimization*, FCC 00-429, CC Docket No.99-200, CC Docket No.,96-98, Second Report and Order, Order on Reconsideration in CC Docket No.96-98 and CC Docket No.99-200, 16 FCC Rcd 306 (2000) (“*NRO Second Report and Order*”) at paras. 47-51; 47 CFR § 52.20(b).

<sup>30</sup> ASCENT comments at 24; New Hampshire comments at 5-6.

<sup>31</sup> See, e.g., Cingular comments; Sprint PCS comments.

<sup>32</sup> Cingular comments at 4.

<sup>33</sup> Sprint PCS comments at 6.

of an ongoing “\$50 million extra each year in order to operate in an LNP environment” to address port requests, conflict resolution, and staffing requirements.<sup>34</sup>

AWS similarly estimates that its costs to implement WNP are \$42 million. Further, the number of hours to hire, train, and ensure that proper inter-carrier and customer processes are in place are substantial and are estimated to be approximately 221,000 person hours. On an ongoing basis AWS estimates that it will cost approximately \$50 million extra per year to support WNP. Again, as noted above, these are simply the costs to implement WNP; these costs are in addition to those the carriers will have to incur to implement the LRN architecture and MIN/MDN split.

As a number of commenters noted, it is ultimately the consumer that will bear these costs, either through deferred or eliminated service improvements and innovations or through rate increases.<sup>35</sup> For example, Sprint PCS notes that these dollar investments and resources needed for WNP “necessarily are capital and resources that Sprint PCS cannot devote to other activities including continued network buildout, improved customer care systems, new 3G network capabilities or advanced services.”<sup>36</sup> AWS agrees with Sprint PCS that neither competition nor the public interest is promoted when carriers must spend significant amounts of dollars and hours implementing a capability that does not increase coverage, reduce prices, or add the new features or services that customers seek and desire.<sup>37</sup>

The record also establishes that WNP is a complex and difficult task (more difficult than wireline LNP) with a number of unresolved problems. In addition to the simple fact that

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<sup>34</sup> Sprint comments at 9-10.

<sup>35</sup> See e.g. Sprint PCS comments at 1, 7; Voicestream comments at 15.

<sup>36</sup> Sprint PCS comments at 7; see also Rural Carrier comments at 5.

<sup>37</sup> Sprint PCS comments at 7.

implementing the LRN architecture for wireless carriers is much more complex, involving the separation of the MDN/MIN and ensuring roaming capability, there are various system modifications and processes associated with WNP that will be required of wireless carriers. For example, WNP requires carriers to undertake substantial network system modifications and expansions of existing billing, provisioning, customer care, and operation support systems in order to accommodate the projected porting volumes and to interface with the Service Order Administrator and the Port Center.<sup>38</sup> Wireless carriers must hire and train numerous staff to address and deal with the porting processes, requests, and problems. Some of these changes are particularly challenging for wireless carriers because of their extensive sales distribution network.<sup>39</sup> In addition, a “complex and flexible intercarrier communications system is required to implement porting.”<sup>40</sup>

Alltel states that there are certain technical difficulties presented by wireless porting, including the fact that carriers using CDMA technology “will need to provision individual numbers within pooled blocks that have been ported out directly in the mobile switch.”<sup>41</sup> Alltel also notes that there are a number of issues relating to interspecies porting between wireless carriers that have not been resolved including the service activation interval.<sup>42</sup> Moreover, the commenters who address this point all agree (without opposition) that risks associated with

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<sup>38</sup> Voicestream comments at 16.

<sup>39</sup> AWS comments at 15.

<sup>40</sup> Sprint PCS comments at 16.

<sup>41</sup> Alltel comments at 6.

<sup>42</sup> The wireless time limit for service order activation is at 2.5 hours while the wireline limit is at 4 days; thus it is unclear what the applicable standard would be for a wireline-to-wireless port. Alltel comments at 5.

porting failures are much higher and more customer-impacting than those risks associated with pooling failures.<sup>43</sup>

**b. The Simultaneous Implementation of Pooling and Porting is Risky**

The record also establishes that the current November 24, 2002 deadline for implementing porting and pooling simultaneously creates substantial burdens and risks for successful implementation of number pooling. Given that the Commission recently imposed the pooling requirement on the industry, wireless carriers now face implementation of two different capabilities within the remaining timeframe. As noted above, wireless carriers have limited resources and time to be able to implement either capability, let alone both, by the same deadline. Consequently, the more important task of number pooling would be jeopardized by the division of carriers' resources between pooling and porting implementation.

Commenters provide a number of examples of the problems and risks both to the network and to the successful implementation of the more important pooling task associated with the simultaneous implementation of pooling and porting. For example:

- Software delays from vendors have exacerbated the time pressures that the industry now faces in conducting inter-carrier testing.<sup>44</sup> As a result AWS anticipates that it will now have to implement pooling at the same time it is participating in intercarrier testing – potentially jeopardizing the successful implementation of both. AWS cannot overemphasize how critical it is for the industry to have inter-carrier communications testing fully completed before porting is implemented. If the intercarrier communication process does not work, parts will fail and customers' service will be affected.
- WNP implementation at the same time as pooling will create additional volume and pressures on the Location Routing Number ("LRN") architecture that supports both pooling and porting, including the NPAC software system. The increase in volumes could be considerable because as Cingular notes, if 75% of wireless customers retain their numbers, then "wireless porting in the first year would increase . . . by

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<sup>43</sup> Voicestream comments at 17-19.

<sup>44</sup> AWS comments at 15-16.

over 400 percent.”<sup>45</sup> This additional volume seriously jeopardizes network reliability.

- The increase in volume would be evermore significant if the Number Portability Administration Center (“NPAC”) software incorporating Efficient Data Representation (“EDR”) (“NPAC version 3.0”) is not available and working properly by November 24, 2002. Without EDR it is unclear whether networks can handle the volume of messages that will be generated by both pooling and porting.<sup>46</sup>
- The increase in volumes on the NPAC/SOA/LSMS network due to wireless porting in addition to wireline porting will create backlogs on the Local Service Management Systems (“LSMS”).<sup>47</sup> A backlog in broadcasting LRN routing information to the LSMS/NPDB may result in incorrect routing information being returned when the NPDB is dipped which may cause the call to be routed to the wrong switch where the call would “die.”
- Despite considerable efforts, the industry still has not resolved the “slow-horse” problem; slow-horse is already creating significant problems with current wireline porting volumes; adding wireless pooling and porting will further aggravate interface and backlog problems related to porting.<sup>48</sup> For example, Cingular notes that the “slow-horse” problem has resulted in at least 1.5%-2% of wireline ported calls resulting in partial failure.<sup>49</sup>
- Aside from the volume issue, “complexity of completing calls is increased by use of an LRN architecture underlying both porting and pooling, presenting more potential points for failure.”<sup>50</sup>

AWS agrees with Cingular that the public interest in number resource optimization necessitates the Commission to forbear from requiring simultaneous implementation of WNP with number pooling. It is important for all parties, including *wireless* carriers, *wireline* carriers, and all customers, to have adequate access to numbering resources and for the numbering shortage to be addressed as quickly and successfully as possible. By allowing the wireless

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<sup>45</sup> Cingular comments at 24.

<sup>46</sup> Alltel comments at 4.

<sup>47</sup> Cingular comments at 20, 23. See also Voicestream comments at 15-16 (estimating that the volumes of transactions would be approximately 1,600,000 monthly, based on year 2000 churn rates).

<sup>48</sup> AWS comments at 18.

<sup>49</sup> Cingular comments at 22.

industry to focus fully on the tasks required to implement the LRN architecture for number pooling without having to additionally allocate resources and attention to number portability, the Commission will minimize the risks of unsuccessful implementation of either capability.

**c. The Benefits of Implementing WNP at this Time are Minor Compared to the Costs**

The parties who oppose the petition generally focus on the potential benefits of WNP.<sup>51</sup> In addition to their arguments that WNP would enhance competition (which are addressed above), these commenters also assert that WNP serves the public interest because: (i) WNP will promote number optimization goals; (ii) it meets the needs of customers who want to keep their phone numbers; and (iii) WNP is needed to promote regulatory parity. As discussed in detail below, there is little evidence that these purported benefits would, in fact, flow from WNP. Moreover to the extent they do, they are minor in comparison to the costs enumerated above.

**(1) WNP is Not Needed to Promote Number Optimization Goals**

Several commenters urge the Commission to require WNP in order to promote various number optimization goals. These parties assert variously that WNP is required to: (i) implement number pooling;<sup>52</sup> (ii) to support other number optimization measures like ITN and UNP;<sup>53</sup> and (iii) to reduce the number of telephone numbers stranded by the aging process.<sup>54</sup> The first two arguments demonstrate a fundamental misunderstanding of the relationship between WNP and number optimization measures like pooling. The last point, while technically accurate, does not justify the maintenance of the LNP requirement.

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<sup>50</sup> Cingular comments at 20.

<sup>51</sup> See e.g. State Coordination Group comments at 7-8; WorldCom comments at 5-10.

<sup>52</sup> See, e.g., NARUC, New Hampshire comments, New York comments.

<sup>53</sup> Michigan comments at 3.

Several commenters ask the Commission to deny Verizon's petition based on the erroneous assumption that WNP is necessary in order to permit wireless carrier's full participation in pooling.<sup>55</sup> These commenters express concern that the lack of WNP would result in (i) number pools available only to one particular carrier;<sup>56</sup> (ii) number pools segregated by type of carrier (CMRS v. landline);<sup>57</sup> and (iii) CMRS carriers not being able to donate numbers to the pool.<sup>58</sup> In addition, the California Commission asserts that the Commission must grant a technology specific overlay for wireless carriers if it grants the Verizon petition, based on the mistaken assumption that without WNP carriers will not be able to pool.<sup>59</sup>

As discussed in AWS' and other parties' comments, however, it is *not WNP but the LRN architecture* that is necessary to implement pooling.<sup>60</sup> AWS realizes, however, that the industry has helped confuse this issue by describing the prerequisite to pooling as "LNP capability." In order to clarify the issue, AWS presents the following diagram which depicts the interrelationship between LRN architecture, porting and pooling and the major tasks that must be completed to accomplish each task.

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<sup>54</sup> Texas comments at 3; Ohio comments at 4; NARUC comments at 1.

<sup>55</sup> See, e.g., New York Department of Public Service at 2.

<sup>56</sup> New York comments at 2.

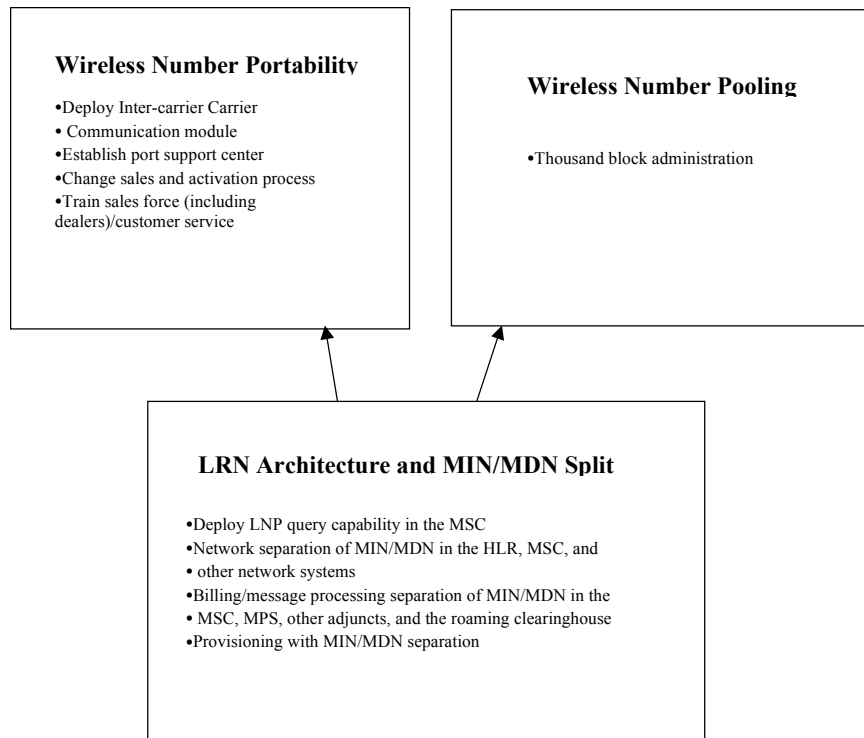
<sup>57</sup> New Hampshire comments at 10.

<sup>58</sup> New York comments at 2.

<sup>59</sup> California Commission comments at 24. The California Commission attempts to justify its request for authority for a technology specific overlay by arguing that the public interest "would not be served by continuing to allocate numbers to both wireline and wireless carriers in the same NPA at a ratio of 10,000 numbers per wireless request to 1,000 numbers per wireline request." It appears that the California Commission believes that wireless carriers would be relieved of the number pooling requirement if the Verizon petition were granted, which various carriers have explained is not the case. *See e.g.* Cingular comments at 19 and Sprint PCS at 7-8. AWS also notes that while it has opposed a technology specific overlay, it has supported a transitional overlay from which wireless carriers would take numbers first. *See e.g.* August 29, 2001 Ex Parte Letter from Douglas Brandon, Vice President of External and Legal Affairs, AT&T Wireless to Commissioner Kevin J. Martin, Federal Communications Commission.

<sup>60</sup> AWS comments at 11-14; Voicestream comments at 11.





As the diagram demonstrates, the implementation of the LRN architecture and MIN/MDN split form the foundation on which both pooling and portability are built.<sup>61</sup> However, portability itself is not a prerequisite to pooling; pooling can be built directly on the LRN foundation without the implementation of porting.

Moreover, once the foundation is in place, wireless carriers will be able to participate in pooling just like wireline carriers. Specifically, wireless carriers will be able to donate thousand blocks and they will be able to utilize thousands blocks from all carrier types within a given rate center. There will be no need for separate pools by carrier or type of carrier. Further, to the extent that some parties assert that unassigned number porting (“UNP”) or individual telephone

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<sup>61</sup> For this reason, AWS also urges the Commission to reject contentions of parties that the wireless industry could have implemented pooling sooner than the current schedule had the industry been more forthcoming about the fact that porting itself was not a prerequisite for pooling. *See, e.g.*, California comments at 5. As the diagram clearly depicts, the most time consuming and difficult prerequisite to pooling, the MIN/MDN split, must be completed as part of the LRN architecture. This task could not reasonably have been accelerated. AWS comments at 12-14.

number porting (“ITN”) is dependent on WNP, such assertions are similarly incorrect. Like pooling, UNP and ITN are dependent on LRN architecture – not WNP.<sup>62</sup> Thus, when and if the Commission ever authorizes these number optimization measures, wireless carriers will be able to participate in them on an equal basis.

With regard to the aging issue, AWS agrees with the commenters that assert that WNP would likely provide some number conservation benefits by reducing the number of telephone numbers in aging.<sup>63</sup> However, AWS does not believe that the resulting savings in telephone numbers would be significant enough to justify the imposition of a WNP requirement. As an initial matter, although it is true that numbers in aging are unavailable for assignment, this is only for a short duration. The Commission’s *NRO Order* imposes a maximum of a 90-day aging period for residential numbers,<sup>64</sup> but AWS and other wireless carriers routinely reduce their aging period to 45 days and, in extraordinary circumstances, to 10 days. Further, contrary to the picture painted by some parties, the overall quantity of telephone numbers in aging is relatively low.<sup>65</sup> For example, approximately 2.7% of the numbers in AT&T Wireless’ number inventory are held in an aging category at any given time. Although this percentage might decrease to a

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<sup>62</sup> Further, ITN and WNP would not go far toward addressing the number shortage problem – number pooling is the most immediate remedy.

<sup>63</sup> Texas comments at 3; Ohio comments at 4; NARUC comments at 1.

<sup>64</sup> *Numbering Resource Optimization*, CC Docket No.99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 at para. 29 (2000) (“*NRO First Report and Order*”).

<sup>65</sup> The commenters that have cited the yearly churn numbers as a proxy for numbers in aging are clearly overstating these figures. Numbers may be aged for up to 90 days, but are not in “aging” for the whole year and thus, using the yearly churn rate as a proxy for aged numbers is inaccurate. For example, the Maryland Commission asserts that 2.6 million numbers are actually in Maryland; assuming a 30% churn rate, 780,000 numbers are stranded. Maryland comments at 2. However, the Maryland Commission’s assumptions about how churn and aging work are simply incorrect. Even assuming a 90 day aging period (which, as noted above, is likely too long), the numbers in aging at any one time are one-quarter of 780,000, or 195,000 numbers. This represents 0.6% of the numbers in Maryland, based on the Maryland Commission’s estimate that there are a total of more than 30 million numbers in Maryland. See Maryland comments at 2.

certain extent if wireless carriers participated in porting,<sup>66</sup> AWS submits that the number of telephone numbers that might be freed up from aging is not large enough to provide any significant number optimization benefits. If the Commission wants to improve number optimization, there are a number of more effective ways to accomplish this goal including eliminating numbers in the reserved category.<sup>67</sup>

**(2) Customer Potential Desire for WNP does Not Justify  
the Imposition of a Regulatory Mandate**

Although parties argue that customers want WNP, few provide any compelling evidence of this fact. The evidence that is provided is largely anecdotal observation and not based on reliable studies demonstrating that customers demand WNP.<sup>68</sup> What is striking however, is that the surveys and news articles that examine what wireless customers value cite better coverage, lower rates, and improved service quality, not WNP.<sup>69</sup> Thus if customers do want WNP they are either keeping pretty quiet about it or WNP is a relatively low priority. ASCENT cites one study conducted in Hong Kong that purports to establish that a large percentage of customers want WNP.<sup>70</sup> However, a number of flaws in the survey questions and methodology skew its results and undercut its validity – even in the Hong Kong market.<sup>71</sup> Moreover, the differences in the way

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<sup>66</sup> There will always be some numbers in aging for customers who simply cancel service (or have their service terminated) without going to another carrier.

<sup>67</sup> See Number Resource Utilization in the United States as of December 31, 2000, Industry Analysis Division, Common Carrier Bureau June 2001 (3.6% of total numbers in reserved v. 2.4% of total numbers in aging).

<sup>68</sup> See, e.g., State Coordination Group comments at 8-9; ASCENT comments at 8-9; Ohio comments at 7-8; California comments at 15.

<sup>69</sup> The Wireless Marketplace in 2000, Peter D. Hart Research Associates, February 2000; CTIA Forbearance Report at Order at para. 35, "Pricing Plans Drive Churn; Fickle Customer One Third Each Year Seek Better Deals," Wireless Week (May 8, 2000); "Can Incentives Stop Churn?" Wireless Week (October 16, 2000).

<sup>70</sup> See ASCENT Comments at 8. See also Cingular comments at 14; Voicestream comments at 8.

<sup>71</sup> The Hong Kong Mobile Number Portability Report cited by ASCENT asked questions designed to highlight the costs and burdens that might be necessitated by a change in a mobile number before asking

that both wireless and wireline services are priced and used in Hong Kong, severely limits the applicability of the study to the United States. Finally, the statistics that some commenters cite about other countries' implementation of WNP as evidence of the desirability of WNP, these studies do not support this assertion because, for example, the studies establish that the percentage of wireless customers availing themselves of the porting option is small indeed.<sup>72</sup>

Further, while AWS does not deny that some consumers may want to have the option of retaining their wireless phone numbers, this fact alone does not mean that WNP should be a regulatory mandate or that the forbearance test is met. Regulation should be reserved for those instances where the market fails and regulation is needed to protect customers.<sup>73</sup> As discussed in detail above, in this case, the wireless market is very competitive and is working to protect consumers. There is overwhelming evidence that wireless carriers continue to provide their customers with more value (even if they do not switch carriers) and that if customers are not satisfied, they change carriers.<sup>74</sup> Similarly, the Commission should allow the market to work in the case of WNP. When and if customer demand for number portability grows, carriers will have the incentive to develop a number portability offering at a price point that reflects the cost to the carrier and the value to the customer.

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questions about customers' attitudes about number portability. For example, the survey asked questions such as what were the costs of changing one's mobile number; how many people did one have to notify upon changing one's mobile number; "if you had to change your mobile number when changing operator, would you have had to change any stationery as a result." Only then did the survey ask about the customer's interest in WNP: "If you could keep your existing mobile phone number when switching to a new Operator or Network, how likely would you be to consider switching, would you be considerably more likely to switch, slightly more likely or would it make no difference?" The study also failed to ask wireless customers any questions about the relative value of WNP. See *Hong Kong Mobile Number Portability Report*, Appendix G, as <http://www.ofta.gov.hk/report-paper-guide/report/mnp-fin.pdf>.

<sup>72</sup> See e.g. WorldCom comments at 7. (Citing that only 1.5% of all Swiss subscribers have ported their numbers since March, 2001).

<sup>73</sup> See Remarks by Chairman Powell Before Federal Communications Bar Association, 6/21/2001 (<http://www.fcc.gov/speeches/powell/2001/spmkp106.html>).

**(3) LNP Is Not Needed to Promote Regulatory Parity:  
Unique Differences Between the CMRS and Wireline  
Industries Justify Forbearance from WNP for CMRS  
carriers**

Some parties have asserted that it is not fair to grant CMRS carriers additional time to meet the WNP deadline, because landline local exchange carriers have already had to expend the money and resources needed to meet their LNP deadline.<sup>75</sup> They argue that WNP is needed to promote regulatory parity between wireless and wireline carriers and object to the fact that wireless carriers are seeking “preferential treatment.”<sup>76</sup> AWS urges the Commission to recognize, however, that there are significant differences between the wireline and wireless industries that justify different treatment and, in this instance, forbearance from WNP requirements.

First and foremost, wireline carriers are subject to a statutory requirement of LNP, while wireless carriers are not. Specifically, Section 251(b)(2) of the Act specifically requires all “local exchange carriers,” both incumbents and competitive local exchange carriers (“CLEC’s”) to implement LNP;<sup>77</sup> there is no such corresponding statutory requirement imposed on wireless carriers.<sup>78</sup> Thus there is no legal requirement for WNP.<sup>79</sup>

Further, the market conditions in wireless and wireline industries are vastly different. The wireline market continues to be dominated by a single, entrenched, incumbent provider with

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<sup>74</sup> See Cingular comments at 9-10; Voicestream comments at 8-9.

<sup>75</sup> California comments at 7-8; Ohio comments at 8-11.

<sup>76</sup> California comments at 7-8.

<sup>77</sup> 47 U.S.C. § 251(b)(2).

<sup>78</sup> Cingular comments at 4, n.8.

<sup>79</sup> As the Commission has recognized on a number of occasions, its obligation is first and foremost to implement the law and Congress’ intent. See e.g. Hon. Kathleen Q. Abernathy, FCC Commissioner, Federal Communications Bar Association Luncheon Address, September 17, 2001 (<http://www.fcc.gov/Speeches/Abernathy/2001/spkqa102.html>).

an overwhelming market share. The new entrants in the wireline market argued that LNP was a necessary precondition to competing fairly with the incumbent carriers, and advocated vigorously for laws and regulations requiring LNP.<sup>80</sup> In contrast, the wireless industry has between four and six facilities-based providers in most markets.<sup>81</sup> New entrants such as the PCS providers, while initially supportive of WNP<sup>82</sup> ultimately learned from experience that WNP is not required in order to compete effectively in the wireless market and now support forbearance.<sup>83</sup>

Moreover, as AWS and other commenters have explained, implementing number portability in the wireless context is more challenging than implementing portability in the wireline context. For example, wireless carriers have a more complicated sales distribution system.<sup>84</sup> Customers also expect their wireless phones to be activated more quickly than their landline phones.<sup>85</sup> In addition, unlike in the wireline context where both the porting and pooling obligations were phased in over time, wireless carriers must implement porting in all markets on a flash cut basis, simultaneously with pooling.<sup>86</sup>

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<sup>80</sup> *Telephone Number Portability*, FCC 96-286, CC Docket No.95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC R'cd 8352 (1996) at para. 26-31 ("First LNP Order").

<sup>81</sup> *Sixth CMRS Report* at C-129 for carrier subscriber totals as of year end 2000 and at 6 for total subscribers in the United States at year end 2000.

<sup>82</sup> *First LNP Order* at para. 142.

<sup>83</sup> Sprint PCS comments at 4-5.

<sup>84</sup> AWS comments at 15.

<sup>85</sup> The time limit for service order activation for wireless is 2.5 hours while the wireline time is 4 days. See ALLTEL comments at 5.

<sup>86</sup> See AWS comments at 2-3, *citing Telephone Number Portability*, CC Docket No.95-116, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236 at para.83 (1997) ("First LNP Reconsideration Order"); and *NRO First Report and Order* at para. 159.

### **III. THE COMMISSION SHOULD REJECT PROPOSALS TO REQUIRE PROGRESS REPORTS OR ENHANCED PENALTIES FOR NON-PERFORMANCE**

A number of commenters propose that the Commission take a more “proactive approach” to ensuring that wireless carriers will be ready to comply with the Commission mandates on November 24, 2002.<sup>87</sup> WorldCom proposes requiring carriers to file quarterly progress reports.<sup>88</sup> Other parties propose that the Commission impose substantial penalties for non-compliance, including denial of numbering resources.<sup>89</sup>

AWS welcomes the Commission’s assistance in ensuring that third party vendors and smaller wireless carriers are aware of the pooling requirements and are making reasonable progress towards fulfilling their commitments. In fact, the wireless industry recently requested assistance from North American Number Council (“NANC”) and the Commission’s Common Carrier Bureau with the preparation of a letter to vendors asking for a report on the status of their software delivery. In the past, the industry has also requested the Commission staff’s assistance with ensuring that the smaller wireless carriers were made aware of and understood their WNP obligations.<sup>90</sup> AWS would welcome the Commission’s continuing and further assistance in this regard.

However, AWS strongly opposes WorldCom’s proposal for quarterly progress reports. Given the limited time remaining between now and November 24, 2002, carriers need to focus all of their resources on meeting the Commission’s mandates. Further, the Commission’s previous attempt to get carriers to report on their progress in meeting the wireline LNP date was

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<sup>87</sup> See, e.g., State Coordination Group comment at 16-19; WorldCom comments at 10-11.

<sup>88</sup> WorldCom comments at 11.

<sup>89</sup> State Coordination Group comments at 12-13.

<sup>90</sup> For example the Wireless Number Portability subcommittee asked the Commission staff to issue a public notice to heighten awareness (especially for the smaller carriers) of their WNP obligations.

a dismal failure.<sup>91</sup> However, in the event that the Commission imposes this reporting requirement on wireless carriers, it should impose this requirement on resellers as well.

AWS also opposes the proposal of the State Coordination Group that the Commission impose substantial penalties in the form of a percentage of revenue and denial of numbering resources. The Commission does not have the jurisdiction to impose penalties in the form of a percentage of carriers' revenue. Under the Act the Commission can only impose fines in the dollar amount specified in Section 501 of the Act.<sup>92</sup> Although it would be within the scope of the Commission's jurisdiction to deny carriers numbering resources, AWS submits that such a penalty would be overly harsh and would ultimately harm consumers, who would be denied service from the carrier of their choice. Carriers already have strong incentives to meet the November 24, 2002 date – chief among them the knowledge that from a practical standpoint, their ability to get telephone numbers after that date will likely be substantially circumscribed if they cannot participate in pooling. There is no need for any additional sanctions.

#### **IV. THE COMMISSION MUST DECIDE THIS PETITION IMMEDIATELY**

As emphasized by various commenters, the Commission must act quickly on this petition if the public interest benefits that would flow from the granting of the petition are to be achieved.<sup>93</sup> The record demonstrates that every month of delay on this petition costs a significant amount of money for the industry.<sup>94</sup> For example, if a decision granting petition were made today, Sprint PCS estimates that it would save \$26.1 million in local number portability

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<sup>91</sup> NPAC LNPA Working Group Status Report to NANC, Issue 16, June 23, 1998. The LNP Implementation Report was cancelled on 5/27/98 on recommendation of LNPA Working Group, at least in part, because of a lack of responsiveness by the carriers.

<sup>92</sup> 47 U.S.C. § 501 (providing that the Commission can levy a fine of not more than \$10,000 for willful and knowing violations.)

<sup>93</sup> See, e.g., AWS comments at 19, Sprint PCS comments at 11-12.

<sup>94</sup> Sprint PCS comments at 9; Cingular comments at 3; AWS Reply comments at 9.



design, testing, and implementation costs.<sup>95</sup> However, if the Commission delays on a decision on the Verizon petition, Sprint PCS estimates that it will save much less and it will have expended numerous costs and resources on porting processes, which could have been more effectively allocated toward pooling.<sup>96</sup> AWS agrees that time is of the essence for acting on the Verizon petition, and that the Commission must grant the petition as soon as possible so that the industry may save resources and time to focus on the important and challenging task of number pooling.

## **V. CONCLUSION**

In light of the fact that competition is thriving, CMRS rates continue to fall, and CMRS consumers freely change service providers, all without the benefit of WNP, AWS urges the Commission to focus and prioritize its regulatory mandate on number pooling. As the record demonstrates, WNP is not required in order to implement number pooling. In addition, simultaneous implementation of WNP's pooling will pose significant risks and burdens on the industry in implementation, and on network reliability. Accordingly, it is consistent with the public interest to forbear from the WNP requirement, and in fact, the Commission is required by Section 10 to do so.

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<sup>95</sup> Sprint PCS comments at 5.

<sup>96</sup> Sprint PCS comments at 5-6.

Respectfully submitted,

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